UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

LUIS ALMODOVAR,

Plaintiff,

-against-

ADAM 1 FOOD CENTER INC. and 2657 PROPERTIES LLC,

Defendants.

Case No. 16 CV 9447

COMPLAINT

Plaintiff, LUIS ALMODOVAR (hereinafter the "Plaintiff"), by and through his counsel, Donald J. Weiss, Esq., hereby files this Complaint and sues ADAM 1 FOOD CENTER INC. (the "Center"), and 2657 PROPERTIES LLC (the "Owner"; the Center and the Owner being hereinafter collectively known as "Defendants"), for a) injunctive relief, b) compensatory relief, and c) attorney fees and costs pursuant to 42 U.S.C. 12181, et. Seq., of the Americans with Disabilities Act ("ADA"), the New York Human Rights Law ("NYCHRL"), and the New York State Human Rights Law ("NYSHRL") and alleges:

JURISDICTION AND PARTIES

1. This is an action for declaratory and injunctive relief pursuant to Title III of the ADA, 42 U.S.C. § 12181, et. Seq. This Court is vested with original jurisdiction under 28 U.S.C. §1331 and §1343.

2. Venue is proper in this Court, pursuant to 28 U.S.C. §1391(B) in that all events giving rise to this lawsuit occurred in the State of New York.

3. The premises where the events which gave rise to this lawsuit is known as 2657 8th Avenue, New York, New York (the "Property").

4. Venue is proper in this Court as the Property is located in New York County.

5. The Defendants are conducting business within the State of New York.

6. Upon information and belief, the Center is the lessee and/or operator of a retail establishment selling food and household items (hereinafter, the "Deli"), and maintains and controls the Deli.

7. Per 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the Deli is a place of public accommodation in that it is an establishment which provides goods and services to the public.

8. The Owner is the owner of the Property where the Deli is located.

9. The Owner allows and permits the Center to occupy the Property pursuant to a written agreement.

10. Pursuant to 42 U.S.C. §12181(7) and 28 C.F.R. §36.104, the Property is a public accommodation covered by the ADA and which must be in compliance therewith.

11. The remedies provided by the NYSHRL and the NYCHRL against discrimination are not exclusive and state and city administrative remedies need not be exhausted in connection with suits brought under the ADA.

12. The Plaintiff uses a wheelchair to ambulate as the result of the amputation of his leg when he was an infant. Plaintiff therefore has a disability within the meaning of the Title III of the ADA. 42 U.S.C. § 12102(2)(A). Plaintiff also has a physical disability within the meaning of the laws of the City and State of New York.

FACTS

13. Plaintiff has often desired to shop at the Deli, the last time prior to the filing of the Complaint having been on or about November 30, 2016, but was deterred from doing so as a result of the architectural barrier at the entrance.

14. Plaintiff visits the area where the Deli is located almost every day.

15. Plaintiff and his girlfriend often shop at a couple of accessible discount stores nearby and they would like to go to the Deli for sandwiches and merchandise when in the area.

16. Due to the barrier at the entrance to the Deli, Plaintiff must go to an accessible delicatessen a few blocks away.

17. Defendants' violations impede upon Plaintiff's right to travel free of discrimination.

18. Plaintiff will patronize the Deli once the barrier to his entry to the Deli has been removed (as shown in the annexed Exhibit A).

19. While it the Center was formally filed as a corporation in 2015, the precise nature and scope of any alterations by, or on behalf of, the Center is unknown as the records of the NYC Department of Buildings do not reveal any applications for alterations to the Property since 2010.

20. Prior to commencement of this action, an investigation of the Deli was conducted, which revealed the following, including the statutory barriers[1] cited (all of which were observed by, or discussed with, Plaintiff prior to the filing of the Complaint):

The Deli entrance is located on 8th Avenue in roughly the middle of the storefront and has a rise approximately 6" high which prevents the Plaintiff from entering.

The entrance to the Deli presents the following violations:

a) The step at the door creates a rise within the maneuvering clearance of the entrance that the Plaintiff is unable to navigate and prevents Plaintiff from entering, as there is no accessible route (201.1, 206.1, 206.2 206.2.1, 206.4, 402, 404).

b) The step at the door creates a rise within the required clear floor space at the entry door (302, 305.2, 305.3).

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[1] All of the statutes cited hereunder refer to the 2010 ADA Standards for Accessible Design and are noted for reference to existing barriers and what remediation is necessary, not as violations of those statutes.

c) Any rise of ½ inch within the accessible route is required to be ramped to ensure that persons in wheelchairs are not prevented from entering (206.4, 303.1 303.4, 402.1, 402.2, 403.4, 404 and 405.1).

d) Defendants failed to provide an accessible means of egress (207.1).

At the time of inspection, there was unpacked merchandise on the floor which would interfere with required turning clearances. To the right of the entrance is a counter with one register and on that same wall is the food service counter. The counter exceeds permitted height and does not have a counter section no more than 36 inches high and 36 inches long.

The following violations exist inside the Deli:

e) Plaintiff would not be able to get the same service as able bodied patrons due to the height of the service counter. Service counters are required to provide a section with a minimum 36 inches long and maximum 36 inches high above the floor (227, 305, 904.4, 904.4.1).

21. Defendants failed to remove the barriers identified herein, even though it is readily achievable to do so (42 USC § 12182(2) (a)).

CLAIMS FOR RELIEF

CLAIM I

READILY ACHIEVABLE BARRIER REMOVAL

22. It is readily achievable for Defendants to remove the architectural barriers to access identified in paragraph 20. By failing to remove barriers to access to the extent it is readily achievable to do so, Defendants have violated Title III of the ADA, 42 U.S.C. § 12182(b)(2)(A)(iii), (iv) and 28 C.F.R. § 36.304.

CLAIM II

FAILURE TO COMPLY WITH THE EXECUTIVE LAW

23. It is readily achievable for Defendants to remove the architectural barriers to

access identified in paragraph 20. By failing to remove barriers to access to the extent it is readily achievable to do so, Defendants have violated Executive Law § 296(2)(c)(iii).

CLAIM III
FAILURE TO COMPLY WITH THE ADMINISTRATIVE CODE

24. The Defendants have discriminated, and continue to discriminate, against Plaintiff in violation of Administrative Code § 8-107(4), by maintaining and/or creating an inaccessible place of public accommodation.

25. It is readily achievable for Defendants to remove the architectural barriers to access identified in paragraph 20. By failing to remove barriers to access to the extent it is readily achievable to do so, Defendants have violated Administrative Code § 8-107(4).

CLAIM IV
VIOLATION OF NEW YORK STATE CIVIL RIGHTS LAWS

26. The Defendants have discriminated against plaintiff pursuant to New York State Executive Law.

27. Consequently, Plaintiff is entitled to recover the penalty prescribed by Civil Rights Law §§ 40-c and 40-d, in the amount of $500 for each and every barrier and violation.

28. Notice of the Defendants' violations and this action has been served upon the Attorney General as required by Civil Rights Law § 40-d.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court enter a judgment against the Defendants, in favor of Plaintiff, containing the following relief:

A. Enter declaratory judgment declaring that the Defendants have violated the ADA and implementing regulations, Executive Law and Administrative Code and declaring the rights of Plaintiff as to the Defendants' place of public accommodation

B. Issue a permanent injunction ordering the Defendants to remove all violations of the ADA, Executive Law and Administrative Code, including but not limited to the violations set forth above, specifically ramping the front entrance and providing an accessible counter;

C. Retain jurisdiction over the Defendants until the Court is satisfied that the Defendants' unlawful practices, acts and omissions no longer exist and will not reoccur;

D. Award at least $2,000.00 (TWO THOUSAND DOLLARS) to Plaintiff as compensatory damages, plus pre-judgment interest, as a result of the Defendants' violations of the New York State Executive Law and the Administrative Code of the City of New York;

E. Award Plaintiff $500.00 (FIVE HUNDRED DOLLARS) for each and every barrier and violation of the law pursuant to New York State Civil Rights Law§§ 40-c and 40-d;

F. Pursuant to New York State Civil Rights Law § 40-d, find the Defendants guilty of a class A misdemeanor for violating New York State Civil Rights Law;

G. Award reasonable attorneys' fees, costs and expenses pursuant to the Administrative Code;

H. Find that Plaintiff is a prevailing party in this litigation and award reasonable attorney fees, costs and expenses pursuant to the ADA; and

I. For such other and further relief, at law or in equity, to which Plaintiff may be justly entitled.

Dated: December 6, 2016

Donald J. Weiss

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EXHIBIT A